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IVAN ALEXANDER ONG & ORS v. THE PRIME MINISTER OF MALAYSIA & ORS

HIGH COURT SABAH & SARAWAK, KUCHING
ALEXANDER SIEW HOW WAI JC
[JUDICIAL REVIEW NO: KCH-13NCVC-11-5-2021]
B 3 SEPTEMBER 2021

Abstract – *As it was the Government's duty under the law to implement s. 3 of the Constitution (Amendment) Act 2019 (lowering the voting age from 21 years to 18 years coupled with the automatic voter registration) 'with all convenient speed', the decision to defer its implementation was illegal, irrational and unreasonable. The Government was obliged to implement s. 3 by the promised date and ought to take all steps necessary for it to come into operation as soon as possible.*

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ADMINISTRATIVE LAW: *Judicial review – Application for – Constitutional matters – Lowering voting age from 21 years to 18 years – Constitution (Amendment) Act 2019, s. 3 – Delay in implementation – Whether Government obliged to implement by promised date – Whether decision to defer to later date illegal, irrational and unreasonable – Whether Government has duty under law to implement 'with all convenient speed' – Whether entire s. 3 to be implemented at same time – Whether order of certiorari quashing decision of Government to defer implementation of s. 3 ought to be granted*

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CONSTITUTIONAL LAW: *Fundamental liberties – Constitutional amendment – Lowering voting age from 21 years to 18 years – Constitution (Amendment) Act 2019, s. 3 – Delay in implementation – Whether Government obliged to implement by promised date – Whether decision to defer to later date illegal, irrational and unreasonable – Whether Government has duty under law to implement 'with all convenient speed' – Whether entire s. 3 to be implemented at same time*

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The Constitution (Amendment) Act 2019 ('the Act') which was passed by the Dewan Rakyat on 16 July 2019 on an unanimous vote of all 211 members present that day and on 25 July 2019 by the Dewan Negara reads, *inter alia*, the lowering of the voting age from 21 years to 18 years. His Majesty Yang di-Pertuan Agong ('YDPA') assented to the Act on 4 September 2019 and the Act was gazetted on 10 September 2019. Under s. 1(2) of the Act, s. 3 of the Act (lowering of the voting age coupled with the automatic voter registration ('AVR')) 'comes into operation on a date to be appointed by the YDPA by notification in the *Gazette*.' No such date had been appointed as yet, so s. 3 had yet to come into operation. The other provisions of the Act on the lowering of the age of qualification to be a candidate for election, came into operation on 11 September 2019 by virtue of s. 19 of the Interpretation Acts 1948 and 1967 ('Interpretation Acts'). On 3 September 2019, the third

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respondent, the Election Commission ('EC') had issued a statement stating to the effect, *inter alia,* that it would take 18 to 24 months for s. 3 to come into operation. On October 2019, the then Minister in the Prime Minister's Office (Legal Affairs Division) was reported to have said in Parliament that the implementation of the lowering of the age of voting and the AVR would be done by July 2021 at the latest. On 25 March 2021, a media statement by the EC announced that the date of implementation would be pushed back to after September 2022. On 27 March 2021, the press reported that the EC had explained to the then Prime Minister regarding the delay in implementation and that the Government was satisfied with the explanation. The applicants in this application for judicial review were Malaysian citizens of age 18 to 20 from the State of Sarawak. The applicants' contentions could be summarised as follows: the Government had promised to implement s. 3 latest by July 2021 and was therefore obliged to implement it by such date; the decision to defer the implementation to a date after September 2022 was illegal, irrational and/or unreasonable; in addition, the respondents had a duty under the law to implement s. 3 'with all convenient speed' and therefore the court should grant an order (of *mandamus)* to compel the respondents to implement s. 3 by the promised date or forthwith; alternatively, if indeed the AVR was not ready to be implemented, the respondents should implement s. 3(a) (lowering of the voting age) first forthwith or by the promised date, separate from the s. 3(b) (the AVR). On their part, the respondents contended: it was not that the respondents do not want to implement s. 3 but it was just that various things that are required to be in place or tasks that have to be completed before s. 3 can come into operation are not yet in place or have yet to be completed; in the EC's latest estimation s. 3 can only be implemented after September 2022 and the Government's decision to defer implementation until after such date was consequent to the EC's latest estimation; as regards implementing s. 3(a) (lowering of the voting age) first separately from s. 3(b), the entire s. 3 has to be implemented at the same time under the Act and the Government has no power under the law to appoint different dates of operation for s. 3(a) and s. 3(b); for the respondents to implement s. 3(a) separately from s. 3(b), the Act has to be amended first.

Held (granting application):

(1) Although under s. 1(2) of the Act, it is the YDPA who appoints the date on which s. 3 is to come into operation, the YDPA would be acting in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet under art. 40 of the Federal Constitution. Section 1(2) imposes a duty on the Cabinet to advise the YDPA to appoint a date on which s. 3 is to come into operation. This duty is non-discretionary, in that, the Cabinet has to advise the YDPA and cannot decide not to so advise the YDPA. Applying ss. 54(2) and

A 108 of the Interpretation Acts, the Cabinet has to advise the YDPA to appoint a date for s. 3 to come into operation 'with all convenient speed'. (paras 28, 37, 38 & 41)

(2) On 3 September 2019, approximately five weeks after the Act had been passed by the two Dewans, the EC issued a media statement showing, among other things, the matters the EC had taken into consideration in setting a timetable of 18 to 24 months to implement s. 3. The EC issued further media statements before issuing the media statement on 25 March 2021 which announced the deferment of the implementation of s. 3 to September 2022. It was evident from the various statements from the respondents that steps had been taken from the outset to address certain issues, including the setting up of a joint task force between the EC and the JPN. While it may be a 'tedious and ongoing task dealing with millions of citizens', the facts remained that (i) these issues were known from the outset; (ii) the respondents knew of these issues when setting the date of implementation of July 2021 at the latest; (iii) July 2021 would mean the respondents have had a full two years to address these issues; and (iv) the respondents knew or must have known the progress made in addressing these issues when they repeatedly affirmed the date of implementation, every few months, right up to March 2021. Issues such as the proposed amendments to the Election Offences Act 1954 were minor, were not absolutely necessary for the implementation of s. 3 and even if deemed necessary, need not be done before s. 3 is implemented but can be done at a later stage prior to the next election. Hence, any decision to defer the implementation of s. 3 to after September 2022 was not only manifestly 'irrational' but 'illegal' as well, in that, it went against the duty in s. 1(2) to act with all convenient speed. (paras 60, 61, 62, 69, 70, 83 & 87)

(3) Applying s. 43(b) of the Interpretation Acts, there was no power to appoint different dates of operation for s. 3(a) versus s. 3(b). The way the Act was drafted with the provision to lower the voting age being lumped together with the provision relating to AVR in a single section instead of each provision coming into a separate section read together with s. 1(2) of the Act shows the intention of Parliament to have both provisions coming into operation at the same time. It was clear from the Act that the legislative intent was for the two provisions under s. 3 to come into operation together on the same date. (paras 55-57)

(4) In the premises, this court was compelled to and hereby granted the following orders (i) an order of *certiorari* quashing the decision of the respondents to defer the implementation of s. 3 to after September 2022; and (ii) an order of *mandamus* that the respondents take all steps necessary for s. 3 to come into operation as soon as possible. (para 92)

Case(s) referred to:

Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors [2020] 1 CLJ 747 FC ***(refd)***
Council of Civil Service Unions & Ors v. Minister of Civil Service [1985] AC 734 ***(refd)***
Loh Wai Kong v. Government Of Malaysia & Ors [1978] 1 LNS 106 HC ***(refd)***
Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor [2014] 2 CLJ 525 FC ***(refd)***
Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd [2008] 5 CLJ 321 FC ***(refd)***
Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***
Tai Choi Yu v. The Government Of Malaysia & Ors [1994] 2 CLJ 174 SC ***(refd)***

Legislation referred to:

Constitution (Amendment) Act 2019, ss. 1(2), 3(a), (b)
Courts of Judicature Act 1964, s. 25, Schedule para. 1
Election Offences Act 1954, ss. 3(1)(a), 12(2), 13(1)
Federal Constitution, art. 40
Interpretation Acts 1948 and 1967, ss. 19, 43(b), 54(2), 108
Rules of Court 2012, O. 53 rr. 1, 2(4)
Specific Relief Act 1950, s. 44

For the applicants - Simon Siah & Clarice Chan; M/s Simon Siah, Chua and Chow Advocs
For the respondents - Azizan Md Arshad, Shamsul Bolhassan & Raja Shahril Anuar; SFCs & Jessica Lee; FC

Reported by Suhainah Wahiduddin

JUDGMENT

Alexander Siew How Wai JC:

[1] The Constitution (Amendment) Act 2019 ("the Act") which was passed by the Dewan Rakyat on 16 July 2019 on a unanimous vote of all 211 members present that day and on 25 July 2019 by the Dewan Negara, reads:

Act A1603

CONSTITUTION (AMENDMENT) ACT 2019

An Act to amend the Federal Constitution.

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Constitution (Amendment) Act 2019.

(2) Section 3 of this Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

Amendment of Article 47

2. The Federal Constitution is amended in Article 47, in paragraph (b), by substituting for the words "twenty-one years" the words "eighteen years".

Amendment of Article 119

3. Article 119 of the Federal Constitution is amended:

(a) in Clause (1), in paragraph (a), by substituting for the words "twenty-one years" the words "eighteen years"; and

(b) in Clause (4), in paragraph (b), by substituting for the words "applies for registration" the words "is registered".

Amendment of Eighth Schedule

4. The Eighth Schedule to the Federal Constitution is amended in section 5 by substituting for the words "twenty-one years" the words "eighteen years".

[2] In the affidavit filed on behalf on the first and second respondents, the then Honourable Prime Minister of Malaysia described the legislative history of the Act as follows:

7. The Constitution (Amendment) Bill 2019 (D.R.14/2019) was read for the first time in the Dewan Rakyat on 04.07.2019, among others, only lowered the voting age from 21 years to 18 years and did not contain any provision relating to automatic voter registration (AVR).

8. The opposition (at that time) proposed that not only youths under the age of 18 be given the right to vote but also have their voices in the Dewan Rakyat and be automatically registered upon attaining the age of 18. As a result, D.R.14/2019 was withdrawn on 10.07.2019. The opposition in principle agreed with the proposal to lower the voting age for Malaysians from 21 to 18 but required that its implementation be done simultaneously with the implementation of automatic registration. The condition was a package deal to garner the opposition's support for the tabling of the Bill by the Government, where it has received a 2/3 majority support with a total of 211 MPs supporting.

9. Thus, the Constitution (Amendment) Bill 2019 (D.R.21/2019) was introduced which is an improvement to the D.R.14/2019 among others, provisions relating to AVR and amendments to the minimum age of candidates for Dewan Rakyat and DUN members.

10. D.R. 21/2019 was passed by the Dewan Rakyat on 16.07.2019 and the Dewan Negara on 25.07.2019 without amendment and became the Constitution (Amendment) Act 2019 [Act 1603].

A copy of D.R. 14/2019 and D.R. 21/2019 are attached herewith and marked as exhibits "MMY-1" and "MMY-2".

[3] The D.R.14/2019 bill and the D.R. 21/2019 bill exhibited are reproduced below:

D. R.14/2019 Bill

A BILL

intituled

An Act to amend the Federal Constitution.

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Constitution (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

Amendment of Article 119

2. The Federal Constitution is amended in Article 119, in Clause (1), in paragraph (a), by substituting for the words "twenty-one years" the words "eighteen years".

D. R.21/2019

A BILL

intituled

An Act to amend the Federal Constitution.

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Constitution (Amendment) Act 2019.

(2) Section 3 of this Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

Amendment of Article 47

2. The Federal Constitution is amended in Article 47, in paragraph (b), by substituting for the words "twenty-one years" the words "eighteen years".

Amendment of Article 119

3. Article 119 of the Federal Constitution is amended:

(a) in Clause (1), in paragraph (a), by substituting for the words "twenty-one years" the words "eighteen years"; and

(b) in Clause (4), in paragraph (b), by substituting for the words "applies for registration" the words "is registered".

Amendment of Eighth Schedule

4. The Eighth Schedule to the Federal Constitution is amended in section 5 by substituting for the words "twenty-one years" the words "eighteen years".

EXPLANATORY STATEMENT

This Bill seeks to amend the Federal Constitution.

2. Clause 1 of this Bill provides for the short title of the proposed Act and the power of the Yang di-Pertuan Agong to appoint the date of coming into operation of clause 3 of the proposed Act. Clauses 2 and 4 shall come into operation on the date immediately following the date of the publication of the proposed Act in the *Gazette* in accordance with section 19 of the Interpretation Acts 1948 and 1967 [Act 388].

3. Clause 2 of this Bill seeks to amend paragraph (b) of Article 47 of the Federal Constitution to lower the age of a citizen who is qualified to be a member of the House of Representatives from twenty-one years to eighteen years.

4. Clause 3 of this Bill seeks to amend Article 119 of the Federal Constitution. Subclause 3(a) seeks to amend paragraph (a) of Clause (1) of Article 119 of the Federal Constitution to lower the age of a citizen who is entitled to vote from twenty-one years to eighteen years. This would allow more Malaysian citizens to vote.

Currently, a person is required to apply for registration as an elector in a constituency and qualifying date in paragraph (b) of Clause (4) of Article 119 of the Federal Constitution refers to the date of such application. Subclause 3(b) seeks to amend the definition of "qualifying date" in paragraph (b) of Clause (4) of Article 119 to mean the date on which a person is registered by the Election Commission as an elector in a constituency. With this amendment, when a citizen attains the age of eighteen years and is qualified to vote, he will be automatically registered as an elector by the Election Commission.

5. Clause 4 of this Bill seeks to amend section 5 of the Eighth 5chedule to the Federal Constitution to lower the age of a citizen who is qualified to be a member of the Legislative Assembly from twenty-one years to eighteen years similar to the proposed amendment to Article 47 in clause 2.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN (U2)3160]

[4] His Majesty Yang Di-Pertuan Agong (the "YDPA") assented to the Act on 4 September 2019 and the Act was gazetted on 10 September 2019.

[5] Under s. 1(2) of the Act, s. 3 of the Act ("s. 3") "comes into operation on a date to be appointed by Yang di-Pertuan Agong by notification in the *Gazette*". A

[6] No such date has been appointed as yet, so s. 3 has yet to come into operation.

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[7] The other provisions of the Act on the lowering of the age of qualification to be a candidate for election, came into operation on 11 September 2019 (the date after publication in the *Gazette*, by virtue of s. 19 of the Interpretation Acts 1948 and 1967 (the "Interpretation Acts")).

[8] A week earlier, on 3 September 2019, the third respondent the Election Commission (the "EC") had issued a statement stating to the effect *inter alia* that it would take 18 to 24 months for s. 3 to come into operation. C

[9] On 10 October 2019, the then Minister in the Prime Minister's Office (Legal Affairs Division) was reported to have said in Parliament that the implementation of the lowering of the age of voting and the automatic voters registration would be done by July 2021 at the latest: D

> KUALA LUMPUR: Penguatkuasaan usia kelayakan mengundi 18 tahun dan pendaftaran pemilih secara automatik dijangka dilaksanakan selewat-lewatnya pada Julai 2021.
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> Menteri di Jabatan Perdana Menteri, Datuk Liew Vui Keong, berkata selepas dikuatkuasakan pada tarikh ditetapkan kelak, Suruhanjaya Pilihan Raya (SPR) wajib memastikan setiap warganegara yang mencapai usia 18 tahun dan tidak hilang kelayakan didaftarkan sebagai pemilih dan layak mengundi pada Pilihan Raya Umum Ke-15 (PRU-15). E
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> SPR menjangkakan semua persediaan berkaitan dapat disiapkan dalam tempoh kira-kira 18 hingga 24 bulan daripada kelulusan pindaan Perkara 119(4) Perlembagaan Persekutuan itu pada 25 Julai lalu. F
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> "SPR sedang dalam persiapan untuk melaksanakan usia kelayakan mengundi 18 tahun dan pendaftaran pemilih secara automatik.
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> "Ini termasuk penyediaan pindaan kepada Peraturan Pilihan Raya Pendaftaran Pemilih 2002, undang-undang lain yang berkaitan dan prosedur operasi standard (SOP) serta sistem dan infrastruktur bagi pelaksanaan itu," katanya pada sesi soal jawab di Dewan Rakyat, hari ini. G
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> Beliau menjawab soalan Wan Hassan Mohd Ramli (PAS-Dungun) yang bertanya bilakah sistem pendaftaran automatik pengundi berusia 18 tahun akan dilaksanakan dan jaminan mereka yang berdaftar sekarang akan dimasukkan dalam Daftar Pemilih Induk yang layak mengundi pada PRU-15. H

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A Vui Keong memaklumkan, SPR sedang bekerjasama dengan Jabatan Pendaftaran Negara (JPN), Jabatan Penjara, Pendaftar Mahkamah dan agensi berkaitan untuk membekalkan maklumat mengenai warganegara yang mencapai usia 18 tahun dan hilang kelayakan sebagai pemilih berdasarkan Perkara 119(3) Perlembagaan Persekutuan.

B **[10]** These statements were followed by several other statements from both the EC and the Government on various subsequent dates, all to the effect that the implementation of s. 3 would be by July, 2021 at the latest.

[11] The position remained the same as late as 10 March 2021 when the Deputy Chairman of the EC was quoted by the media as follows:

C I am told the EC is on track in ensuring the system for AVR and lowering the voting age to 18 will be ready by July 2021.

The Secretariat has been working hard to achieve this, despite challenges posed by Covid-19 and movement control orders.

D The systems are currently being put in place. With regard to the changes in legislation, I do not have that information at the moment.

The projection of 7.8 million new voters when AVR is in place is probably accurate or close to accurate. "This huge number of new voters will mean the EC will face the tremendous challenge of getting the new voter rolls.

E Registration is one thing, but the gazetting of new voter rolls is a necessary requirement with certain procedures needed – such as objection period – before a person can vote ...

[12] On the next day 11 March 2021, the press reported on an interview by Bernama with the President of the Dewan Negara, Tan Sri Rais Yatim:

F Dewan Negara president Rais Yatim says it is impractical to lower the voting age to 18 for now because of time-consuming obstructions faced by the relevant agencies in implementing it.

In an interview with Bernama last night, Rais said it would take time to come up with the list of 18-year-olds eligible to vote and the
G constituencies they come from.

He said this would have to involve the resources of both the National Registration Department and the Election Commission (EC).

On the issue of 18-year-olds voting, whether we can implement it now, the answer is no. Although it has been passed in terms of the legislature,
H in terms of readiness there are many gaps.

After looking at the real situation from the lens of the Dewan Negara, it's impractical to be implemented in this season" he said.

The Undi18 bill, officially known as Constitution (Amendment) Bill 2019,
I was passed by the Dewan Negara in July 2019 and gazetted two months later. The amendment lowers the voting age from 21 to 18.

Previously, the EC had said the implementation of the 18-year-old voting age and automatic voter registration would be implemented from July this year.

[13] This was followed by a media statement by the EC on 25 March 2021 announcing that the date of implementation would be pushed back to after September, 2022 instead of by July, 2021:

2. SPR ingin menjelaskan bahawa persiapan ke arah pelaksanaan tersebut masih berjalan dan dalam tindakan sewajarnya. Ini termasuklah gerak kerja seperti pembangunan sistem, semakan dan penyelarasan data, program libat urus susulan bersama agensi Kerajaan, parti politik dan badan bukan kerajaan (NGO) serta persiapan-persiapan lain yang berkaitan dengannya.

3. Walau bagaimanapun, SPR bersikap realistik dengan perkembangan dan situasi semasa negara ketika ini yang secara umumnya masih dalam tempoh Perintah Kawalan Pergerakan (PKP) bagi mengekang penularan wabak COVID-19. Ini secara langsung menjejaskan perancangan dan persiapan SPR. Justeru, Pendaftaran Pemilih Automatik dan Undi18 dijangkakan boleh dilaksanakan selepas 1 September 2022 setelah menilai semula pelbagai kekangan dan isu yang telah menjejaskan perancangan dan persiapan awal SPR.

[14] Two days later on 27 March 2021, the press reported that the EC had explained to the then Prime Minister regarding the delay in implementation and that the Government was satisfied with the explanation:

MUAR: Kerajaan Perikatan Nasional (PN) tidak gentar mengenai pelaksanaan pendaftaran pemilih automatik dan mengundi pada usia 18 tahun (Undi18).

Malah, Perdana Menteri, Tan Sri Muhyiddin Yassin, berkata kerajaan juga mahu Suruhanjaya Pilihan Raya (SPR) mempercepatkan pelaksanaan proses itu.

Bagaimanapun, katanya, Pengerusi SPR, Datuk Abdul Ghani Salleh, sudah memberikan penjelasan kepadanya mengenai penangguhan Undi18 itu dan kerajaan puas hati.

Faktanya ialah SPR tidak dapat melaksanakannya kerana keadaan sekarang berikutan COVID-19.

Ada halangan yang tidak dapat mereka atasi terutama membabitkan sistem dan kerjasama antara agensi kerajaan lain terutama Jabatan Pendaftaran Negara (JPN) selain ketidakmampuan SPR melaksanakan undi 18 tahun itu pada masa ini.

Masalahnya bukan mengenai kerajaan Perikatan Nasional (PN) tidak benarkan. Tetapi perkara ini tentang SPR kerana mereka yang akan melaksanakan Rang Undang-Undang (RUU) berkenaan," katanya kepada pemberita pada sidang media selepas melancarkan Zon Ekonomi Khas Pagoh Fasa Satu, di Bandar Universiti Pagoh, di sini, hari ini.

A Muhyiddin berkata demikian ketika mengulas mengenai keputusan SPR menangguhkan pelaksanaan Undi18 yang sepatutnya dilaksanakan Julai ini. Dua hari lalu, SPR dalam kenyataan mengumumkan pendaftaran pemilih automatik dan Undi18, dijangka hanya boleh dilaksanakan selepas 1 September tahun depan.

B Berikutan itu, pelbagai pihak menyuarakan rasa tidak puas hati dengan keputusan itu.

Muhyiddin juga menolak anggapan sesetengah pihak kononnya PN mempunyai kaitan dengan penangguhan pelaksanaan Undi18 itu kerana keputusan berkenaan dibuat oleh SPR sendiri setelah mengambil kira pelbagai aspek pelaksanaannya.

C "Ini bukan mengenai kerajaan PN. la adalah tentang suruhanjaya yang kami sokong. Apa juga usaha mereka (SPR) untuk selesaikan kerja-kerja mereka, kita bantu. Tetapi keupayaan dalam situasi pandemik dan sebagainya, tidak boleh buat begitu (laksanakan pendaftaran automatik dan Undi18)," katanya.

D Muhyiddin berkata beliau juga ada bertanyakan kepada SPR sama ada pelaksanaan itu boleh dipercepatkan dari tarikh yang diberikan iaitu seawal 1 September 2022.

E "(SPR kata) Kalau boleh September (2022), itu pun paling cepat. (Saya tanya) kalau boleh September tahun ini? Dia kata tak boleh. Habis nak paksa macam mana."

[15] Subsequently however on 29 April 2021, the then Minister in the Prime Minister's Department (Parliament and Law) was reported to have said to the effect that the EC would take immediate steps to implement s. 3:

F Suruhanjaya Pilihan Raya (SPR) akan mengambil langkah segera untuk menurunkan had umur mengundi (Undi18) susulan mesyuarat kabinet semalam, kata Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang), Takiyuddin Hassan.

G "Susulan keputusan (kabinet) tersebut, Suruhanjaya Pilihan Raya (SPR) akan mengambil langkah segera untuk menyelesaikan beberapa perkara lagi berkaitan peruntukan undang-undang tertentu dan juga perkara teknikal termasuk memperkemas kini sistem perisian yang diperlukan," katanya dalam kenyataan media hari ini.

H Bulan lalu, SPR memaklumkan akan menangguhkan Undi18 sejurus pelaksanaan pendaftaran undi automatik (AVR) kepada September tahun 2022.

SPR berkata perintah kawalan pergerakan (PKP) menjejaskan rancangan tersebut, dan laporan awal dijangka akan siap pada September tahun ini.

I Langkah itu menyebabkan 1.2 juta belia berumur 18 hingga 20 tahun tidak dapat mengundi dalam pilihan raya umum (PRU) yang dijangka akan diadakan selepas proklamasi darurat tamat pada Ogos tahun ini.

Hal itu turut mencetuskan reaksi bantahan terhadap SPR dan kerajaan Perikatan Nasional (PN), susulan jangkaan pelaksanaan Undi18 sebelum ini pada Julai ini.

[16] A few days later on 2 May 2021, the press reported on further statements by the said Minister:

The government has given an assurance to implement the Undi18 this year, says Minister in the Prime Minister's Department (Parliament and Law), Datuk Seri Takiyuddin Hassan.

He said that currently, the Election Commission (EC) was still looking into several matters before finalising, and expected it to be implemented this July, thus enabling Malaysians aged 18 to vote in the 15th General Election.

"However, I can't give an exact time frame but definitely within this year. If we can do it this July, we will do it," he told reporters after attending the Aidilfitri contributions presentation for Friday mosque officials, and also penghulu for the Kota Bharu Parliamentary constituency on Sunday (May 2).

Takiyuddin said that the government supported, and was very committed to ensuring, that the amended Article 119 of the Federal Constitution, which was to lower the age limit for voters from 21 to 18, could be implemented.

"It is indeed the intention of the government, under the leadership of Prime Minister Tan Sri Muhyiddin Yassin, for the government to give the right to our people who are 18 years old to vote and determine the leadership of our country," he said.

[17] Despite the above-referred press reports in late April and early May, 2021 on the statements of the said Minister, in these proceedings the respondents are still taking the position that the implementation of s. 3 can only be done after September, 2022:

Affidavit by the Chairman of the EC on behalf of the EC:

5. I state that this affidavit is filed in response to the allegation that the 3 respondents deliberately delay the implementation of the lowering of the voting age to 18 years and the AVR and other allegations not specifically referred are denied.

6. I also state that based on the Hansard, it was the intention of Parliament that the amendment to lower the voting age to 18 years and implementation of the AVR be made together.

7. I further state that based on the Hansard, Parliament also noted that appropriate time be given to EC to review the implementation of the AVR as well as the need to develop work processes to ensure the smooth running of the AVR which includes amendments to the relevant provisions, namely the Election (Registration of Electors) Regulations

2002 and Elections (Conduct of Elections) Regulations 1981. Act 1063 also needs to be amended to enable the implementation to be enforced separately.

8. In this regard, I state that the EC's commitment to implement automatic voter registration (AVR) and lowering of the voting age to 18 by July 2021 was based on the surrounding circumstances and EC's preliminary planning which expected the 15th General Election (GE) to be held in 2023. When it was announced on 10.10.2019, the nation was yet to face the threat of the pandemic and not expecting the implementation of movement control orders (MCO) by the government.

9. I verily believe and state that amongst the constraints faced by the EC in preparation towards the implementation of the AVR and lowering of the voting age to 18 is the inconsistencies between voters' data and the data in the National Registration Department (NRD). The EC has since together with the NRD set up a special task force to verify new registered voters and will be voters. It was discovered that some of the voters did not have a complete address. It is a tedious and ongoing tasks dealing with millions of citizens.

10. I further state that the problem of non-updated addresses is the biggest challenge in the implementation of the AVR. Currently, many Malaysians do not update their address on their identity card (MyKad) even though they have resided in new places. Apart from that, there are also those who have different addresses on MyKad and MyKad chips. The government needs to devise a special program for the voters to update the addresses according to the address on MyKad chips.

11. I am advised by the Senior Federal Counsel that based on existing legal provisions, eligible citizens must apply to register as a voter by filling in personal details including residential address. The EC will then determine the voting locality based on the address given. As for AVR, based on the data obtained from NRD, the voting locality of the will be voters will be based on the address instead of where they reside. In this regards, the EC is expecting to receive many complaints and objections on this.

12. I verily belief and state that the constraints faced by the EC in implementation of the AVR and lowering of the voting age to 18 need to be examined. AVR without verification or against the voter's desire to be registered will cause many problems. Verification and cleaning of the electoral roll is a complicated task. A clean electoral roll is one of the determining factors in ensuring a fair and clean election process.

13. The EC has issued a media statement on 25.03.2021 on the AVR and lowering of the voting age to 18 can only be realised by September 2022 which is different from the date previously announced which is in July 2021.

14. I further state that the nationwide MCO to curb Covid-19 had affected the EC's plans and preparation to see the move come into fruition. The EC is committed to the implementation of the initiatives that were passed by

Parliament for the 15th general election, guided by Article 55(3) of the Federal Constitution.

15. I further state that related preparations are underway, such as system development, data checking and coordination, as well as engagement with government agencies, political parties and NGOs. The EC is realistic with the time frame after evaluating the constraints and problems that have affected the EC's earlier plans and preparations.

16. Based on the EC's latest record, there are 5.6 million citizens aged 18 years and above. Of this figure, those aged between 18 and 20 make up 1.2 million individuals. Meanwhile, there are 4.4 million people who are at least 21 years old who are eligible to vote, but have not registered.

17. The EC will launch an automatic pre-registration review system on its portal in August, which will allow 5.6 million will be voters to check and confirm their information. The EC will be preparing an interim report on Undi18 and the AVR, which will be ready in September 2021.

18. I verify belief and state that the paragraphs 3(a) and (b) of the Constitutional Amendment shall come into force on the same date. This is in line with parliament's intention to enforce both paragraphs 3(a) and (b) simultaneously which was the basis for the support of all political parties to the amendment. Necessary amendments need to be done to the relevant laws ...

Affidavit by the then Prime Minister of behalf of the first and second respondents:

...

11. I state that the Government supports the implementation of the lowering of the voting age to 18 years and the AVR and wants the EC to expedite the implementation of the process. This is in line with the Government's commitment to realise the matter. However, due to certain constraints, EC has to postpone the process and the Government accepted the EC's explanation regarding the postponement of the implementation of the process. The decision for not gazetting the amendments' date is decided by the Government and not by the EC.

12. I state that the EC needs to hold consultations and engagement sessions with all political parties and stakeholders to discuss methods to expedite the implementation of the lowering of the voting age to 18 years and AVR. This includes a proposal to separate its implementation as a way forward for it to be implemented immediately. This will allow 1.2 million voters between the ages of 18 and 20 to vote.

[18] The applicants in this application for judicial review are Malaysian citizens of age 18 to 20 from the State of Sarawak.

[19] The applicants seek the following relief:

1. A declaration that the decision of the first and second respondent to hinge the execution of section 3(a) of the Federal Constitution (Amendment) Act ("the Act") upon the enforcement and execution of the AVR is improper, irrational, unreasonable, disproportionate and/or wrong in law;

2. A declaration that the decision of the 1st and 2nd respondent to hinge the execution of section 3(a) upon the execution of section 3(b) is unreasonable, disproportionate and/or wrong in law;

3. A declaration that the applicants have a legitimate expectation in that section 3(a) of the Act will be enforced immediately;

4. A declaration that the first and second respondent has a duty to enforce section 3(a) of the Act immediately and in any event before July 2021;

5. A declaration that the respondents had failed to afford the applicants the opportunity to be heard before deciding to indefinitely postpone the enforcement/execution of section 3(a) of the Act;

6. An order of *certiorari* to wholly quash the decision of the first and/or second respondent in not enforcing section 3(a) of the Act immediately on or before July 2021;

7. An order of *mandamus* compelling the decision of the first and/or second respondent in not enforcing section 3(a) of the Act forthwith, and in any event on or before July 2021;

8. In the alternative, an order of *certiorari* to wholly quash the entire decision of the 1st respondent and/or the second respondent not to enforce the entire section 3 of the Act immediately on or before July 2021;

9. In the alternative, an order of *mandamus* to compel the first and/or the second respondent to enforce/cause the enforcement the entirety of section 3 of the Act immediately or in any event on or before July 2021;

10. Liberty to apply;

11. Any further direction, order or writ for the enforcement of the rights under Part II of the Federal Constitution, or any of thereof, for complete disposal of justice in the current matter;

12. No order as to costs, and

13. Any further order as this Honourable Court thinks fit and just.

Procedure

[20] The procedure for applications for judicial review is set out in O. 53 of the Rules of Court 2012, the pertinent part of which reads:

ORDER 53

APPLICATION FOR JUDICIAL REVIEW

Application for judicial review (O. 53 r. 1)

1. (1) This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified.

(2) This Order is subject to the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 [Act 137].

Applications (O. 53 r. 2)

2. (1) An application for any of the reliefs specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) shall be in Form 109.

(2) An application for judicial review may seek any of the reliefs, including a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or is connected with the same subject matter.

(3) Upon the hearing of an application for judicial review, the Court shall not be confined to the relief claimed by the applicant but may dismiss the application or make any orders, including an order of injunction or monetary compensation:

Provided that the power to grant an injunction shall be exercised in accordance with the provisions of section 29 of the Government Proceedings Act 1956 [Act 359] and section 54 of the Specific Relief Act 1950.

(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

Leave (O. 53 r. 3)

3. (1) An application under this Order shall not be made unless leave therefor has been granted in accordance with this rule.

(2) An application for leave must be made *ex parte* to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.

Leave

[21] This court heard the applicants' application for leave on 19 May 2021 and granted leave on 28 May 2021.

A ***Locus Standi***

[22] Under O. 53 r. 2(4) of the Rules of Court 2012, "any person who is adversely affected by the decision of any public authority shall be entitled to make the application". In *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor* [2014] 2 CLJ 525, the Federal Court
B said:

> ... In our view for an applicant to pass the 'adversely affected' test, the applicant has to at least show he has a real and genuine interest in the subject matter.

C **[23]** The respondents have not disputed the applicants have the requisite *locus standi*.

[24] This court finds that the applicants as Malaysian citizens of age 18 to 20 would be adversely affected by any delay in the implementation of s. 3 and that the applicants have a real and genuine interest in the matter.

D **Contentions Of The Parties**

[25] The applicants' contentions can be summarised as follows: the Government had promised to implement s. 3 (lowering of the voting age coupled with the AVR) latest by July 2021 and is therefore obliged to
E implement it by such date; the decision to defer the implementation to a date after September 2022 is illegal, irrational and/or unreasonable; in addition the respondents have a duty under the law to implement s. 3 "with all convenient speed" and therefore the court should grant an order (of *mandamus*) to compel the respondents to implement s. 3 by the promised date
F or forthwith; alternatively if indeed the AVR is not ready to be implemented, the respondents should implement s. 3(a) (lowering of the voting age) first forthwith or by the promised date, separate from the s. 3(b) (the AVR).

[26] On their part the respondents contend: it is not that the respondents do not want to implement s. 3 but it is just that various things that are
G required to be in place or tasks that have to be completed before s. 3 can come into operation are not yet in place or have yet to be completed; in the EC's latest estimation s. 3 can only be implemented after September 2022 and the Government's decision to defer implementation until after such date was consequent to the EC's latest estimation; as regards implementing s. 3(a)
H (lowering of the voting age) first separately from s. 3(b) (the AVR), the entire s. 3 has to be implemented at the same time under the Act and the Government has no power under the law to appoint different dates of operation for s. 3(a) and s. 3(b); for the respondents to implement s. 3(a) separately from s. 3(b), the Act has to be amended first.

I

Power Of The Court To Grant The Relief Sought

[27] It appears to this court the main relief being sought is an order from this court to compel the respondents to implement the entire s. 3 (both the lowering of voting age and the AVR) by the promised date or forthwith, or alternatively if indeed the AVR is not ready for implementation, then s. 3(a) (lowering of the voting age) first, by the promised date or forthwith.

[28] Although under s. 1(2) of the Act, it is the YDPA who appoints the date on which s. 3 is to come into operation, the YDPA would be acting in accordance with the advice of the cabinet or of a Minister acting under the general authority of the Cabinet under art. 40 of the Federal Constitution.

[29] Does this court have the power to grant such an order (order of *mandamus*) to compel the Cabinet or a Minister representing the Cabinet to so advise the YDPA?

[30] The two legislations empowering the courts to grant an order of *mandamus* are expressly referred to in O. 53 r. 1 of the Rules of Court 2012 which reads:

> **Application for judicial review (O. 53 r. 1)**
>
> 1. (1) This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified.
>
> (2) This Order is subject to the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 [Act 137].

[31] Section 25 together with para. 1 of the Schedule, of the Courts of Judicature Act 1964 ("the CJA") and Chapter VIII of Part II of the Specific Relief Act 1950 (the "SRA"), are reproduced below:

> The Courts of Judicature Act 1964
>
> **Powers of the High Court**
>
> 25. (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
>
> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

SCHEDULE [Subsection 25(2)]

ADDITIONAL POWERS OF HIGH COURT

1. Prerogative writs

Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.

The Specific Relief Act 1950

CHAPTER VIII

ENFORCEMENT OF PUBLIC DUTIES

Power to order public servants and others to do certain specific acts

44. (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:

Provided that:

(a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;

(b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;

(c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;

(d) the applicant has no other specific and adequate legal remedy; and

(e) the remedy given by the order applied for will be complete.

(2) Nothing in this section shall be deemed to authorise a Judge:

(a) to make any order binding on the Yang di-Pertuan Agong;

(b) to make any order on any servant of any Government in Malaysia, as such, merely to enforce the satisfaction of a claim upon that Government; or

(c) to make any order which is otherwise expressly excluded by any law for the time being in force.

49. Bar to issue of *mandamus*

Neither the High Court nor any other court in Malaysia shall hereafter issue any writ of *mandamus*.

[32] Under s. 44 of the SRA, '[A] judge may make an order requiring any specific act to be done or forborne, by any person holding a public office ...' A

[33] However, the courts have interpreted the phrase 'any person holding a public office' as not referring to a Minister; *Loh Wai Kong v. Government Of Malaysia & Ors* [1978] 1 LNS 106; [1978] 2 MLJ 175 approved in the judgment of Abdul Hamid Mohamad CJ in *Minister Of Finance, Government Of Sabah v. Petrojasa Sdn Bhd* [2008] 5 CLJ 321; [2008] 4 MLJ 641 (FC). B

[34] In the leading Federal Court case of *Petrojasa* (*supra*), Abdul Hamid Mohamad CJ and Arifin Zakaria FCJ (as he then was) delivered separate judgments, with Hashim Yusoff FCJ agreeing with both judgments. C

[35] The learned Justices in their judgments affirmed the powers of the courts to grant an order of *mandamus* against a Minister, further to s. 25 read together with para. 1 of the Schedule, of the CJA:

Abdul Hamid Mohamad CJ: D

[23] It is clear that the Minister of Finance, Government of Sabah is "a member of the administration" but not a "person holding public office." What it means, in relation to s. 44 SRA is that s. 44 SRA is not applicable to the appellant, meaning that an order under s. 44 SRA cannot be issued against the appellant. To that extent the High Court Judge Gunn Chit Tuan J, was right in *Loh Wai Kong* (*supra*) regarding the effect of s. 44 SRA on the Government of Malaysia and the Minister of Home Affairs. In my view the learned High Court judge in the instant appeal was right in following *Loh Wai Kong* (*supra*) and the Court of Appeal was wrong in its interpretation of s. 44 SRA. E

... F

[27] We now come to the provisions of CJA. First, s. 25(2) provides:

(2) Without prejudice to the generality of sub-s. (1) the High Court shall have the additional powers set out in the Schedule: Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the issue. G

Then paragraph 1 of the Schedule provides:

Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibitions, *quo warranto* and *certiorari*, or any others for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose. H

[28] These powers are additional powers, ie, additional to any other power given by other written laws. Being additional powers they can only be more than, not limited to, what has already been provided by other laws. The proviso to s. 25(2) uses the words "in accordance with any written law or rules of court relating to the issue." I am of the view that the use of the word "in accordance" and not "subject to" merely refers to the procedural aspects. It cannot mean limited to what is provided in other I

written laws. To read that proviso in such a way is to nullify the effect of "additional powers". There would be nothing additional. So, what is the point of having the provision? Bear in mind that the CJA was enacted after the Federal Constitution was promulgated and para. 1 of the Schedule makes specific reference to the Constitution ie, "for the enforcement of the right conferred by Part II of the Constitution ..." GPA and SRA were both enacted much earlier even though they have been revised. So, in my view, it is not correct to read s. 25(2) as subject to or limited to what is provided by GPA or SRA.

[29] We shall now look at the provision of para. 1 of the Schedule in detail. *Mandamus* is mentioned as one of the additional powers. It may be issued to "any person or authority" which, in my view, includes a Minister of a Government.

[30] My brother Arifin Zakaria FCJ has dealt at length, citing authorities to the effect that judicial review lies against a Minister. I shall not repeat. Indeed, the writ of *habeas corpus*, one of the writs mentioned in para. 1 of the Schedule is mostly issued against a Minister. That being the case, I am of the opinion that *mandamus* may be issued against the appellant.

Arifin Zakaria FCJ:

[60] The issues at the heart of this appeal are: (a) whether an order of *mandamus* would lie against the appellant in this present case; (b) whether there exists a statutory duty on the appellant to pay arising from s. 33(3) of the GPA.

[61] On the first issue, by definition an order of *mandamus* is a command issued by the court to an authority to perform a public duty placed upon it by law. The learned High Court Judge in his judgment held that in the present case an order of *mandamus* cannot be made against the appellant on two main grounds. One of them is that s. 44(1) of the SRA is directed towards "... Person holding a public office" and on the authority of *Loh Wai Kong v. Government of Malaysia & Ors* [1978] 1 LNS 106, he held that the appellant is not a person holding a public office. The term "public officer" is not defined in the SRA and the learned judge in *Loh Wai Kong* relied on the definition of the words as appearing in the Interpretation Act 1967 (Now Part I of Interpretation Acts 1948 and 1967, Act 388). However, the learned High Court Judge failed to consider that in this case the application was made pursuant to both s. 44(1) of the SRA as well as s. 25 and para. 1 of the Schedule to the CJA ...

[69] On that premise I am of the view that once a certificate is issued under s. 33(1) of the GPA and duly served on the State Government it is then obligatory on the State Government to make the necessary payment. In other words s. 33(3) of the GPA creates a statutory duty on the part of the State Government to pay the amount as certified. The next question is whether an order of *mandamus* may be issued against the Minister of Finance, Government of Sabah, the appellant in the present case directing the appellant to pay the sum as stated in the certificate ...

[72] The position now is that the courts in the Commonwealth, Malaysia including, have moved away from the traditionalist approach that the Crown can do no wrong. Therefore, the courts in the Commonwealth jurisdictions generally have held that the executive arms of the Government are amenable to the judicial review proceedings ...

[73] In the local case of *Teh Cheng Poh v. Public Prosecutor* [1978] 1 LNS 202 the Privy Council intimated that even though under art. 32(1) of the Federal Constitution the Yang di-Pertuan Agong is immuned from any proceedings whatsoever in any court, therefore, an order of *mandamus* would not lie against his Majesty but that would not prevent a *mandamus* be granted against the members of the Cabinet requiring them to advise the Yang di-Pertuan Agong to act in a certain way ...

[76] The appellant in the present case, as the Minister in charge of financial matters for the State is naturally responsible for the payment of the judgment sum. An order of *mandamus* may, in the circumstances, be issued to enforce such a compliance by the appellant ...

[81] From the above, the position in law is that, there is a duty on the part of Government to pay the amount stated in the certificate issued under s. 33(3) of the GPA to the respondent. It is not a matter of discretion for the Government whether to pay or not to pay. As a statutory duty it is of course binding on the State Government. And it is incumbent upon the court to give effect to such statutory duty and if necessary through the coercive force of the order of *mandamus*.

Statutory Duty

[36] Section 1(2) of the Act reads:

1. ...

(2) Section 3 of this Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

[37] This court is of the view s. 1(2) imposes a duty on the Cabinet to advise the YDPA to appoint a date on which s. 3 is to come into operation.

[38] This court is further of the view this duty is non-discretionary, in that the Cabinet has to advise the YDPA and cannot decide not to so advise the YDPA.

[39] Section 1(2) is silent as to when the Cabinet has to advise the YDPA.

[40] Section 54(2) and s. 108 of the Interpretation Acts read:

Computation of time

54. ...

(2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

Provision when no time prescribed

108. Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[s. 38].

[41] Applying the above provisions of the Interpretation Acts, the Cabinet has to advise the YDPA to appoint a date for s. 3 to come into operation "with all convenient speed".

[42] If the Cabinet takes the position that certain tasks have to be completed first before the Cabinet is in a position to so advise the YDPA, it would follow that those tasks have to be completed 'with all convenient speed' as well.

With All Convenient Speed

[43] The phrase "with all convenient speed" has been in use in the English speaking world for centuries.

[44] The phrase can be found in the Treaty of Paris signed in 1783 by Britain and the United States following the American Revolutionary War.

[45] Thomas Jefferson the then American Secretary of State had the occasion in 1792 to interpret the phrase in a letter to a British Minister George Hammond:

.... By the same article [Article 7 of the Treaty], his Britannic Majesty stipulates, that he will, with all convenient speed, withdraw his garrisons from every post within the United States. "When no precise term" says a writer on the *Law of Nations* [Vattel, 1.4.c.26] "has been marked for accomplishment of a treaty, and for the execution of each of its articles, good sense determines that every point should be executed as soon as possible. This is, without doubt, what was understood." The term in the treaty, with all convenient speed, amounts to the same thing, and clearly excludes all unnecessary delay ...

[46] In the treatise *Interpretation Acts, Origins and Meanings* (Thomson Reuters, 2019), the learned author described how the phrase ended up in various interpretation Acts in the Commonwealth:

[29.40] Symonds in his textbook *The Mechanics of Law Making* [published in 1835], in suggesting the concept of a Statute of Directions and Constructions, proposed a series of practical rules for inclusion concerning time. One suggestion was to provide:

> When no time is specified for doing a thing, it shall be done with all convenient speed, as often as the prescribed occasion shall arise, until the directions of the law have been satisfied.

That suggestion was not taken up in the UK Act of 1850, but was shortly later in a South Australian Act in 1872. From that source, the provision was then replicated widely in the common law world ...

[47] In *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35, the Federal Court said: A

> ... under section 38 of the Interpretation and General Clauses Ordinance, 1948 it is provided that:
>
> > Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed and as often as the prescribed occasion arises. B
>
> What then is the "convenient speed"? In our view it must be "as soon as possible" or "within a reasonable time", and not "as late as possible". Obviously what amounts to "convenient speed" must vary from case to case ... C

[48] In *Tai Choi Yu v. The Government Of Malaysia & Ors* [1994] 2 CLJ 174; [1994] 1 MLJ 677, the Supreme Court held:

> Section 104(3) of the Act does not impose any time limit within which the DGIR must notify the appellant that a certificate had been issued under s. 104(1) of the Act. That being so, generally the provision of s. 54(2) of the Interpretation Acts 1948 and 1967 (Consolidated and revised, 1989) would apply. This section states ... 'Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.[1] D
>
> What is 'convenient speed' has been held by the courts to mean reasonable time within which an act has to be done, but always having regard to the facts and peculiar circumstances of each case. E

[49] More recently in *Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors* [2020] 1 CLJ 747; [2019] 6 MLRA 673, the Federal Court stated: F

> [67] Section 5(4) of the 1985 Act allows the Minister to prescribe regulations stipulating time but as apparent from the above, the Minister has not done so. We then turned to s. 54(2) of the Interpretation Acts 1948 and 1967 which stipulates that where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion requires. Simply put, for any matter where time has not by law been prescribed, such matter ought to be completed as soon as practicable and without inordinate delay. G
>
> [68] As the burden to prove the detention was lawful lies on the detaining authority, whether the report was completed with convenient speed or without inordinate delay remains a matter for the detaining authority i.e. the respondents, to establish. It is trite that where there is delay on the part of the respondents to complete the report with "convenient speed", it is incumbent upon the respondents to discharge the burden of proffering a satisfactory explanation for the delay ... H

[50] The following principles can be distilled from the case authorities cited above: I

A

1. with all convenient speed' means as soon as possible or within a reasonable time;

2. what constitutes 'with all convenient speed' for a particular case will depend on the facts and circumstances of that case; and

B

3. when there has been a delay, the onus is on the public authority to justify the delay.

Can Section 3(a) Be Implemented On A Different Date Than Section 3(b)

[51] Before turning to the issue whether the respondents have been derelict in their duty under s. 1(2) of the Act, the court will first deal with the C preliminary issue whether the respondents have the option of having a date of operation for s. 3(a) (the lowering of voting age) appointed first if indeed the AVR under s. 3(b) is not ready yet, as the applicants contend, or whether s. 3(a) and s. 3(b) have to have the same date of operation as a matter of law, as the respondents contend.

D **[52]** In support of their contention the respondents have referred to s. 43 of the Interpretation Acts which reads:

Construction of power to appoint commencement

43. A power to appoint a date on which a written law shall come into E operation does not include power to appoint:

(a) a date prior to the date on which the instrument of appointment is published; or

(b) different dates for different provisions of that law,

unless express provision is made in that behalf.

F

[53] The respondents submit that pursuant to s. 43(b) of the Interpretation Acts above, there is no power to appoint a different date of operation for s. 3(a) than for s. 3(b).

[54] In further support of their contention, the respondents have referred G the court to other Acts where the power to appoint different dates for different provisions was expressly stated, for example, the Constitution (Amendment) Act 2005 and the related notices of appointment of dates of operation in the *Gazette*:

Constitution (Amendment) Act 2005

H

LAWS OF MALAYSIA

Act A1239

CONSTITUTION (AMENDMENT) ACT 2005

An Act to amend the Federal Constitution.

I

ENACTED by the Parliament of Malaysia as follows:

1. Short Title and Commencement

(1) This Act may be cited as the Constitution (Amendment) Act 2005.

(2) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette* and the Yang di-Pertuan Agong may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of Article 122

2. The Federal Constitution is amended in Article 122 in the proviso to Clause (1A) by substituting for the words "sixty-five years" the words "sixty-six years".

Amendment of Article 125

3. Article 125 of the Federal Constitution is amended in Clause (1) by substituting for the words "sixty-five years" the words "sixty-six years".

Amendment of the Ninth Schedule

4. The Federal Constitution is amended in the Ninth Schedule:

(a) in the State List (List II) in item 6, by substituting for paragraph (c) the following paragraph:

"(c) Subject to the Federal List, water (including rivers and canals but excluding water supplies and services); control of silt; riparian rights."

(b) in the Supplement to State List for States of Sabah and Sarawak (List IIA), by inserting after item 19 the following item:

"20. Subject to the Federal List, water supplies and services."; and

(c) in the Concurrent List (List III), by inserting after item 9C the following items:

"9D. Subject to the Federal List, water supplies and services.

9E. Preservation of heritage."

Amendment of the Tenth Schedule

5. The Tenth Schedule to the Federal Constitution is amended:

(a) in Part III:

(i) in item 3, by inserting after the words "connected with" the words "water supplies and services,"; and

(ii) by substituting for item 8 the following item:

8. Receipts in respect of raw water."; and

(b) in Part V, by inserting after item 8 the following items:

"9. Receipts in respect of water supplies and services, including water rates."

10. Revenue from licences connected with water supplies and services.

Notice in the *Gazette*

MALAYSIA

Warta Kerajaan

SERI PADUKA BAGINDA

DITERBITKAN DENGAN KUASA

HIS MAJESTY'S GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY

Jil. 49 No. 6	**21hb Mac 2005**	*TAMBAHAN No. 18 PERUNDANGAN (B)*

P.U. (B) 97.

AKTA PERLEMBAGAAN (PINDAAN) 2005

PENETAPAN TARIKH PERMULAAN KUAT KUASA

PADA menjalankan kuasa yang diberikan oleh subseksyen 1(2) Akta Perlembagaan (Pindaan) 2005 [*Akta A1239*], Yang di-Pertuan Agong menetapkan 21 Mac 2005 sebagai tarikh Akta itu, kecuali perenggan 5*(a)*, mula berkuat kuasa.

Bertarikh 19 Mac 2005
[PPM(S)1039.00.00;PN(U^2)2393]

Dengan Titah Perintah

TAN SRI SAMSUDIN BIN OSMAN
Setiausaha Jemaah Menteri

MALAYSIA

Warta Kerajaan

SERI PADUKA BAGINDA

DITERBITKAN DENGAN KUASA

HIS MAJESTY'S GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY

Jil. 51 No. 2	**30hb Januari 2007**	*TAMBAHAN No. 7 PERUNDANGAN (B)*

P.U. (B) 38.

CONSTITUTION (AMENDMENT) ACT 2005

APPOINTMENT OF DATE OF COMING INTO OPERATION

IN exercise of the powers conferred by subsection 1(2) of the Constitution (Amendment) Act 2005 [*Act A1239*], the Yang di-Pertuan Agong appoints 31 January 2007 as the date on which paragraph 5*(a)* of the Act comes into operation.

Dated 2007
[;PN(U^2)2393]

By Command

TAN SRI MOHD SIDEK BIN HAJI HASSAN
Secretary to the Cabinet

[55] This court is in agreement with the submissions of the respondents that applying s. 43(b) of the Interpretation Acts, there is no power to appoint different dates of operation for s. 3(a) versus s. 3(b).

[56] The respondents further submit that (i) the way the Act is drafted with the provision to lower the voting age being lumped together with the provision relating to AVR in a single section instead of each provision coming under a separate section read together with s. 1(2) of the Act shows the intention of Parliament to have both provisions coming into operation at the same time; and (ii) the Hansard shows Parliament had intended to have those two provisions coming into operation at the same time.

[57] This court finds that it is clear from the Act the legislative intent is for the two provisions under s. 3 to come into operation together on the same date and it is not necessary to refer to the Hansard to find such intent.

Whether The Respondents Have Acted With All Convenient Speed

[58] To recap, the respondents have to act with all convenient speed to have s. 3 come into operation and if the respondents take the position that certain tasks have to be completed first before the Cabinet can advise the YDPA to appoint a date of operation for s. 3, those tasks have to be completed with all convenient speed as well.

[59] After reviewing the cause papers and written submissions and hearing learned counsels on both sides, this court, for the reasons set out in the following paragraphs, finds the respondents have failed to act with all convenient speed.

The Date Of Implementation Of By July 2021 Was Set By The Respondents Themselves And The Respondents Repeatedly Reaffirmed This Date Of Implementation Right Up To March, 2021

[60] As mentioned earlier, on 3 September 2019 approximately five weeks after the Act had been passed by the two Dewans, the EC issued a media statement. This media statement is reproduced below:

SURUHANJAYA PILIHAN RAYA MALAYSIA

KENYATAAN MEDIA

BIL. 71/2019

PENJELASAN BERKAITAN UNDI18

Saya perhatikan terdapat beberapa kenyataan mengenai Undi18 yang kurang tepat kebelakangan ini. Untuk mengelakkan kekeliruan, saya ingin membuat penerangan mengenai Undi18.

A. Skop Undi18

Undi18 melibatkan 3 perkara, iaitu:

(i) Umur layak mengundi diturunkan dari 21 tahun ke 18 tahun;

(ii) Umur layak menjadi calon diturunkan dari 21 tahun ke 18 tahun;dan

(iii) Pendaftaran warganegara yang layak sebagai pemilih secara automatik.

B. Pindaan Perlembagaan Persekutuan

Untuk membolehkan Undi18 dijalankan, Perlembagaan Persekutuan perlu dipinda. Untuk itu, Parlimen telah meluluskan pindaan Perlembagaan Persekutuan di Sesi Dewan Rakyat pada 16 Julai 2019 dan Sesi Dewan Negara pada 25 Julai 2019 seperti berikut:

(i) Perkara 119(1) Perlembagaan Persekutuan untuk menurunkan had kelayakan umur pengundi dari 21 kepada 18 tahun;

(ii) Perkara 47 dan Seksyen 5 Jadual Kelapan Perlembagaan Persekutuan untuk menurunkan had kelayakan umur menjadi calon dari 21 kepada 18 tahun; dan

(iii) Perkara 119(4) Perlembagaan Persekutuan untuk melaksana pendaftaran pemilih secara automatik.

C. Tarikh Pelaksanaan Undi18

Undi18 belum dilaksanakan. Ini adalah kerana pindaan-pindaan Perlembagaan Persekutuan di atas belum berkuatkuasa.

Pada masa ini, SPR sedang meneliti isu-isu berkaitan pelaksanaan penuh Undi18 untuk menyediakan satu garis masa dan kajian kos yang lengkap mengenai pelaksanaan Undi18. Isu-isu yang berkait, antara lainnya ialah:

(i) Menaik taraf sistem ICT SPR;

(ii) Keperluan data-data dari jabatan/agensi Kerajaan yang lain, antaranya Jabatan Pendaftaran Negara, Jabatan Penjara dan/atau Mahkamah serta Kementerian Kesihatan Malaysia;

(iii) Pindaan kepada mana-mana undang-undang atau peraturan pilihan raya yang perlu untuk melaksanakan Undi18;

(iv) Pindaan kepada Perlembagaan Negeri ataupun Undang-undang Tubuh Kerajaan Negeri untuk membolehkan warganegara yang berumur 18 tahun menjadi calon Dewan Undangan Negeri;

Dalam masa yang sama, SPR juga perlu melihat dan meneliti perkara-perkara berikut:

(i) Kos pilihan raya akan datang;

(ii) Kemudahan-kemudahan pilihanraya untuk menjamin keselesaan pengundi;

(iii) Keperluan tenaga kerja SPR dan petugas pilihan raya;

(iv) Kajian mengenai pusat-pusat mengundi baharu yang perlu diwujudkan untuk menampung pertambahan jumlah pengundi yang mendadak pada pilihan raya akan datang; dan

(v) Penetapan lokaliti pengundi-pengundi baharu.

D. Kempen Penukaran Alamat dan Pendidikan Pengundi

Selain daripada perkara-perkara di atas, saya berpendapat bahawa satu kempen secara besar-besaran perlu dilaksanakan. Ini bagi memberi kesedaran dan kefahaman kepada warganegara yang layak untuk didaftarkan mengenai pentingnya mengemaskini alamat mastautin terkini di Jabatan Pendaftaran Negara sebelum Undi18 dilaksanakan. Ini supaya pengundi didaftarkan dalam bahagian pilihan raya di mana mereka bermastautin.

Saya juga berpendapat bahawa satu pendekatan pendidikan pengundi yang menyeluruh perlu dilaksanakan secara berkesan. Justeru, SPR, melalui Akademi Pilihan Raya (APR), telah bersetuju dan akan bekerjasama dengan Kementerian Pendidikan Malaysia untuk menjalankan aktiviti-aktiviti pendidikan pengundi di sekolah-sekolah menengah dengan serta merta.

Sesi libat urus akan terus diadakan dari semasa ke semasa dengan semua pihak berkepentingan termasuklah parti-parti politik dari blok kerajaan dan pembangkang mengenai perkara ini.

E. Tarikh Pelaksanaan Undi18

Mengambil kira perkara-perkara di atas serta keperluan untuk menyediakan satu pendekatan yang menyeluruh dan berkesan, SPR akan membuat pemakluman kepada pihak Kerajaan serta juga pihak pembangkang mengenai status kesediaan SPR untuk melaksanakan sepenuhnya Undi18 dari semasa ke semasa.

Saya ingin menjelaskan bahawa Undi18 akan hanya dilaksanakan sama ada secara bersekali atau berasingan setelah mempertimbangkan pandangan-pandangan daripada pelbagai pihak.

Jangkaan pelaksanaan Undi18 ini sama ada secara bersekali atau berasingan ialah di antara 18 hingga 24 bulan dari sekarang.

F. Penglibatan Pengundi 18 Tahun Pada Pilihan Raya Umum (PRU) Negeri Sarawak Ke-12

SPR tidak mempunyai apa-apa maklumat mengenai tarikh pembubaran awal Dewan Undangan Negeri (DUN) Sarawak. Oleh itu, tarikh PRU Negeri Sarawak Ke-12 tidak dapat dipastikan.

Dalam hal ini, persoalan sama ada pengundi-pengundi 18 tahun dapat mengundi pada PRU Negeri Sarawak Ke-12 tidak dapat dijawab secara tepat pada masa ini.

G. Pendaftaran Pemilih Secara Automatik Melibatkan Semua Warganegara Yang Layak Dan Belum Mendaftar

Apabila dilaksanakan kelak, semua warganegara yang telah mencapai umur 18 tahun dan ke atas tetapi belum mendaftar akan didaftarkan secara automatik. Ini bermakna, semua yang layak mengundi kerana telah mencapai umur 18 tahun serta warganegara 21 tahun ke atas yang belum mendaftar sebagai pengundi pada masa tersebut akan didaftarkan sebagai pengundi secara automatik.

H. Pendaftaran Pengundi Pada Masa Ini

Oleh kerana pada masa ini Undi18, terutamanya pendaftaran pengundi yang berumur 21 tahun ke atas dan layak untuk didaftarkan sebagai pengundi perlu dilakukan seperti sedia ada, iaitu dengan mengisi Borang A di pejabat SPR, kaunter-kaunter bergerak SPR, pejabat pos, penolong pendaftar pemilih atau melalui atas talian di URL mysprdaftar.spr.gov.my.

Sekiranya mana-mana warganegara tidak mendaftar sebagai pemilih dan pilihan raya diadakan sebelum Undi18 dilaksanakan, mereka tidak dapat mengundi dalam pilihan raya tersebut. Ini adalah kerana nama mereka tiada dalam daftar pemilih yang akan digunakan dalam pilihan raya yang berkenaan memandangkan proses pendaftaran sehingga diwartakan mengambil masa antara 4 hingga 5 bulan. Berhubung perkara ini, perlu diingatkan bahawa daftar pemilih yang akan digunakan dalam mana-mana pilihan raya ialah daftar pemilih terakhir yang telah diwartakan sebelum pilihan raya berkenaan.

I. Bahagian Pilihan Raya Pengundi Baharu

Bagi mereka yang akan didaftarkan secara automatik kelak, bahagian pilihan raya mereka akan ditentukan mengikut alamat mereka di Jabatan Pendaftaran Negara sebagaimana proses sedia ada. Mereka hendaklah mengemaskini alamat mereka di Jabatan Pendaftaran Negara dari semasa ke semasa. Ini untuk memastikan SPR mempunyai maklumat terkini dalam menentukan bahagian pilihan raya apabila didaftarkan oleh SPR kelak. Ini terpakai bagi pendaftaran secara manual atau secara automatik.

J. Bahagian Pilihan Raya Pengundi Sedia Ada

Bagi mereka yang telah pun mendaftar sebagai pemilih, bahagian pilihan raya mereka adalah kekal seperti sebelum ini iaitu mengikut alamat mereka semasa pendaftaran dibuat. Sekiranya mereka telah bertukar alamat dan alamat baharu dikemaskini di Jabatan Pendaftaran Negara, dan mereka ingin menukar bahagian pilihan raya mereka mengikut alamat terkini, mereka perlu memohon untuk menukar bahagian pilihan raya

dengan mengisi Borang A di pejabat SPR, kaunter-kaunter bergerak SPR, pejabat pos, penolong pendaftar pemilih atau melalui atas talian di URL mysprdaftar.spr.gov.my.

Sekian, terima kasih.

AZHAR AZIZAN HARUN
Pengerusi
Suruhanjaya Pilihan Raya (SPR) Malaysia
Tarikh: 3 September 2019/3 Muharam 1441H

[61] This media statement is important for present purposes as the statement shows, among other things, the matters the EC had taken into consideration in setting a timetable of 18 to 24 months to implement s. 3.

[62] The EC issued further media statements on 7 June 2020 and on 10 September 2020, before issuing the media statement on 25 March 2021 referred to earlier announcing the deferment of the implementation of s. 3 to September 2022, at the earliest. Those statements in June and September 2020 are reproduced below:

SURUHANJAYA PILIHAN RAYA MALAYSIA

KENYATAAN MEDIA

BIL. 19 / 2020

PENDAFTARAN PENGUNDI18 TAHUN

1. Merujuk kepada maklumat yang tular di media sosial yang mengajak rakyat Malaysia yang berumur 18 tahun ke atas untuk mendaftar sebagai pengundi, Suruhanjaya Pilihan Raya (SPR) ingin menegaskan bahawa pendaftaran pengundi 18 tahun **BELUM DILAKSANAKAN**.

2. Pendaftaran pengundi 18 tahun akan dilaksanakan serentak dengan pendaftaran pemilih secara automatik setelah segala persiapan SPR diselesaikan termasuklah penyediaan pindaan kepada Peraturan-peraturan Pilihan Raya (Pendaftaran Pemilih) 2002 dan undang-undang lain yang berkaitan, penyediaan standard operating procedures (SOP) serta penyediaan sistem dan infrastruktur. Kesemua persiapan ini dijangkakan selesai selewat-lewatnya pada bulan Julai 2021.

3. SPR dari semasa ke semasa akan mengeluarkan kenyataan media rasmi untuk sebarang perkembangan terkini dan menyeru kepada orang ramai untuk merujuk terlebih dahulu kepada SPR melalui laman rasmi www.spr.gov.my atau Facebook rasmi SPR atau menghubungi talian 03-8892 7200 bagi mengelakkan penularan berita palsu.

Sekian, terima kasih.

DATUK AZHAR AZIZAN HARUN
Pengerusi
Suruhanjaya Pilihan Raya Malaysia

Tarikh: 7 Jun 2020/15 Syawal 1441H

SURUHANJAYA PILIHAN RAYA MALAYSIA

KENYATAAN MEDIA

Bil. 53/2020

ORANG RAMAI DIMINTA TIDAK PERCAYA MESEJ YANG DITULARKAN MENGENAI PENDAFTARAN PENGUNDI BERUSIA 18 TAHUN

1. Suruhanjaya Pilihan Raya Malaysia (SPR) ingin memaklumkan terdapat usaha giat oleh pihak-pihak tidak bertanggungjawab yang cuba mengelirukan orang ramai berkenaan gesaan untuk pendaftaran pengundi berusia 18 tahun.

2. Berhubung mesej tular yang mendakwa kononnya kenyataan daripada Pengerusi SPR bahawa terdapat seramai 4.5 juta rakyat Malaysia yang layak masih belum berdaftar sebagai pemilih khususnya pendaftaran untuk warganegara yang berusia 18 tahun adalah tidak berasas. Hakikatnya, warganegara yang berusia 18 tahun ini masih belum dibenarkan mendaftar sebagai pengundi.

3. Ini adalah kerana pada masa ini SPR sedang dalam persiapan untuk melaksanakan pendaftaran pengundi 18 tahun dan pendaftaran pemilih secara automatik berdasarkan kepada pindaan Perkara 119(4) Perlembagaan Persekutuan yang telah diluluskan oleh Parlimen pada Mesyuarat Kedua Penggal Kedua Parlimen Keempat Belas. Persiapan tersebut termasuklah penyediaan pindaan kepada Peraturan-Peraturan Pilihan Raya (Pendaftaran Pemilih) 2002 dan undang-undang lain yang berkaitan, penyediaan Standard Operating Procedures (SOP) dan penyediaan sistem dan infrastruktur bagi pelaksanaan umur kelayakan pengundi 18 tahun dan pendaftaran pemilih secara automatik. SPR menjangkakan semua perkara ini akan dapat disiapkan dalam tempoh 18 hingga 24 bulan dari tarikh kelulusan pindaan oleh Dewan Negara pada 25 Julai 2019. Jangkaan tarikh pelaksanaan tersebut adalah selewat-lewatnya pada bulan Julai 2021.

4. Sehubungan dengan itu, orang ramai diminta supaya tidak terpengaruh dan tidak menyebarkan mesej-mesej palsu tersebut termasuklah perkongsian di media sosial kerana dikhuatiri boleh menimbulkan kekeliruan kepada orang ramai. Malahan tindakan menyebarkan maklumat tidak benar dan berunsurkan perkauman ini boleh mengganggu gugat ketenteraman awam dan tindakan perundangan boleh diambil ke atas mereka yang terlibat.

Sekian, harap maklum.

UNIT KOMUNIKASI KORPORAT
Suruhanjaya Pilihan Raya Malaysia
Tarikh: 10 September 2020/22 Muharam 1442H

[63] On their part, Ministers from the Government on various occasions made statements in the Dewan Rakyat on the status of implementation of s. 3.

[64] The first was on 10 October 2019 and the press report on this statement had been set out earlier in para. 9, but for ease of reference is reproduced below:

> KUALA LUMPUR: Penguatkuasaan usia kelayakan mengundi 18 tahun dan pendaftaran pemilih secara automatik dijangka dilaksanakan selewat-lewatnya pada Julai 2021.
>
> Menteri di Jabatan Perdana Menteri, Datuk Liew Vui Keong, berkata selepas dikuatkuasakan pada tarikh ditetapkan kelak, Suruhanjaya Pilihan Raya (SPR) wajib memastikan setiap warganegara yang mencapai usia 18 tahun dan tidak hilang kelayakan didaftarkan sebagai pemilih dan layak mengundi pada Pilihan Raya Umum Ke-15 (PRU-15).
>
> SPR menjangkakan semua persediaan berkaitan dapat disiapkan dalam tempoh kira-kira 18 hingga 24 bulan daripada kelulusan pindaan Perkara 119(4) Perlembagaan Persekutuan itu pada 25 Julai lalu.
>
> SPR sedang dalam persiapan untuk melaksanakan usia kelayakan mengundi 18 tahun dan pendaftaran pemilih secara automatik.
>
> "Ini termasuk penyediaan pindaan kepada Peraturan Pilihan Raya Pendaftaran Pemilih 2002, undang-undang lain yang berkaitan dan prosedur operasi standard (SOP) serta sistem dan infrastruktur bagi pelaksanaan itu," katanya pada sesi soal jawab di Dewan Rakyat, hari ini.
>
> Beliau menjawab soalan Wan Hassan Mohd Ramli (PAS-Dungun) yang bertanya bilakah sistem pendaftaran automatik pengundi berusia 18 tahun akan dilaksanakan dan jaminan mereka yang berdaftar sekarang akan dimasukkan dalam Daftar Pemilih Induk yang layak mengundi pada PRU-15. Vui Keong memaklumkan, SPR sedang bekerjasama dengan Jabatan Pendaftaran Negara (JPN), Jabatan Penjara, Pendaftar Mahkamah dan agensi berkaitan untuk membekalkan maklumat mengenai warganegara yang mencapai usia 18 tahun dan hilang kelayakan sebagai pemilih berdasarkan Perkara 119(3) Perlembagaan Persekutuan.

[65] This was followed by statements in the form of answers to oral questions posed in the Dewan Rakyat, on 9 September 2020 and on 2 November 2020:

September 9, 2020

MESYUARAT KEDUA, PENGGAL KETIGA,

PARLIMEN KEEMPAT BELAS 2020

HARI RABU: 9 SEPTEMBER 2020

NO. SOALAN: 5

JAWAPAN

[YB DATO' SHABUDIN BIN YAHAYA, TIMBALAN MENTERI DI JABATAN PERDANA MENTERI (PARLIMEN DAN UNDANG-UNDANG)]

Tuan Yang di-Pertua,

Untuk makluman Ahli Yang Berhormat,

Saya mohon izin untuk menjawab pertanyaan ini serentak dengan pertanyaan oleh *Yang Berhormat Puan Lim Hui Ying* pada *15 September 2020* kerana menyentuh isu yang sama iaitu berkaitan pelaksanaan kelayakan umur 18 tahun sebagai pengundi dan pendaftaran pemilih secara automatik.

Tuan Yang di-Pertua,

Untuk makluman Ahli Yang Berhormat, Suruhanjaya Pilihan Raya (SPR) sedang dalam persiapan untuk melaksanakan umur kelayakan pengundi 18 tahun dan pendaftaran pemilih secara automatik berdasarkan kepada pindaan Perkara 119(4) Perlembagaan Persekutuan yang telah diluluskan oleh Parlimen pada Mesyuarat Kedua Penggal Kedua Parlimen Keempat Belas.

Persiapan yang sedang dilakukan oleh SPR adalah meliputi penyediaan *pindaan kepada Peraturan-Peraturan Pilihan Raya (Pendaftaran Pemilih) 2002 dan undang-undang lain yang berkaitan penyediaan standard operating procedures (SOP) dan penyediaan sistem dan infrastruktur* bagi pelaksanan umur kelayakan pengundi 18 tahun dan pendaftaran pemilih secara automatik.

Bagi maksud membantu SPR dalam menyediakan SOP pelaksanaan pendaftaran pemilih secara automatik ini, SPR telah mengadakan *beberapa sesi libat urus* bersama beberapa jabatan/agensi Kerajaan seperti berikut:

(i) Unit Permodenan Tadbiran dan Perancangan Pengurusan Malaysia (MAMPU), Jabatan Perdana Menteri;

(ii) Kementerian Dalam Negeri;

(iii) Jabatan Pendaftaran Negara (JPN);

(iv) Jabatan Penjara Malaysia;

(v) Pejabat Ketua Pendaftar Mahkamah;

(vi) Kementerian Kesihatan Malaysia;

(vii) Angkatan Tentera Malaysia; dan

(viii) Polis DiRaja Malaysia.

SPR juga telah mengadakan beberapa sesi libat urus seperti berikut:

(i) Sesi Libat Urus Bersama Parti-Parti Politik Dari Blok Kerajaan dan Blok Pembangkang (Bipartisan) Berhubung Pelaksanaan Umur Pengundi dan Calon 18 Tahun serta Pendaftaran Pemilih Secara Automatik pada 3 Oktober 2019;

(ii) Sesi Libat Urus Dengan Pertubuhan-Pertubuhan Bukan Kerajaan dan Parti-Parti Politik Negeri Sarawak pada 26 November 2019; dan

(iii) Sesi Libat Urus Dengan Pertubuhan-Pertubuhan Bukan Kerajaan dan Parti-Parti Politik Negeri Sabah pada 3 Disember 2019.

Melalui penganjuran sesi-sesi libat urus tersebut, SPR telah memberi penerangan mengenai perancangan pelaksanaan pindaan undang-undang yang telah diluluskan serta mendapatkan maklum balas dan pandangan daripada semua pihak.

Di samping itu, SPR juga sedang bekerjasama dengan JPN melalui *Jawatankuasa Taksforce SPR dan JPN* dalam persiapan melaksanakan pendaftaran pemilih secara automatik dan urusan-urusan lain yang berkaitan.

SPR menjangkakan semua persiapan yang sedang diambil tindakan oleh SPR akan dapat disiapkan dalam tempoh *18 hingga 24 bulan dari tarikh kelulusan pindaan oleh Dewan Negara pada 25 Julai 2019*. Sehubungan itu, jangkaan tarikh pelaksanaan tersebut adalah selewat-lewatnya pada bulan *Julai 2021*.

Sekian, terima kasih.

November 2, 2020

MESYUARAT KETIGA, PENGGAL KETIGA,

PARLIMEN KEEMPAT BELAS 2020

HARIRABU: 2 NOVEMBER 2020

JAWAPAN-JAWAPAN BAGI PERTANYAAN-PERTANYAAN JAWAB LISAN YANG TIDAK DIJAWAB DI DALAM DEWAN

(SOALAN NO. 10 HINGGA NO. 41)

NO. SOALAN: 28

PEMBERITAHUAN PERTANYAAN LISAN DEWAN RAKYAT MESYUARAT KETIGA, PENGGAL KETIGA, PARLIMEN KEEMPAT BELAS

PERTANYAAN : LISAN

DARIPADA: YB TUAN LIM LIP ENG [KEPONG]

TARIKH: 2 NOVEMBER 2020 (ISNIN)

SOALAN

TUAN LIM LIP ENG [KEPONG] minta **PERDANA MENTERI** menyatakan bilakah kerajaan akan melaksanakan usia kelayakan mengundi 18 tahun dan pendaftaran pemilih secara automatik.

JAWAPAN

YB DATO' TAKIYUDDIN BIN HASSAN, MENTERI DI JABATAN PEDANA MENTERI (PARLIMEN DAN UNDANG-UNDANG)

Tuan Yang di-Pertua,

1. Untuk makluman Ahli Yang Berhormat, Suruhanjaya Pilihan Raya (SPR) sedang dalam persiapan untuk melaksanakan umur kelayakan pengundi 18 tahun dan pendaftaran pemilih secara automatik berdasarkan kepada pindaan Perkara 119(4) Perlembagaan Persekutuan yang telah diluluskan oleh Parlimen pada Mesyuarat Kedua Penggal Kedua Parlimen Keempat Belas. Persiapan yang sedang dilaksanakan oleh SPR adalah meliputi penyediaan *pindaan kepada Peraturan-Peraturan Pilihan Raya (Pendaftaran Pemilih) 2002 dan undang-undang lain yang berkaitan, penyediaan standard operating procedures (SOP) dan penyediaan sistem dan infrastruktur* bagi pelaksanaan umur kelayakan pengundi 18 tahun dan pendaftaran pemilih secara automatik.

2. Bagi maksud membantu SPR dalam menyediakan SOP pelaksanaan pendaftaran pemilih secara automatik ini, SPR telah mengadakan beberapa sesi libat urus bersama beberapa jabatan/agensi Kerajaan seperti Unit Permodenan Tadbiran dan Perancangan Pengurusan Malaysia (MAMPU); Jabatan Perdana Menteri; Kementerian Dalam Negeri; Jabatan Pendaftaran Negara (JPN); Jabatan Penjara Malaysia; Pejabat Ketua Pendaftar Mahkamah; Kementerian Kesihatan Malaysia; Angkatan Tentera Malaysia; dan Polis DiRaja Malaysia.

3. SPR juga telah mengadakan beberapa sesi libat urus seperti berikut:

(i) Sesi Libat Urus Bersama Parti-Parti Politik Dari Blok Kerajaan dan Blok Pembangkang (Bipartisan) Berhubung Pelaksanaan Umur Pengundi dan Calon 18 Tahun serta Pendaftaran Pemilih Secara Automatik pada 3 Oktober 2019;

(ii) Sesi Libat Urus Dengan Pertubuhan-Pertubuhan Bukan Kerajaan dan Parti-Parti Politik Negeri Sarawak pada 26 November 2019; dan

(iii) Sesi Libat Urus Dengan Pertubuhan-Pertubuhan Bukan Kerajaan dan Parti-Parti Politik Negeri Sabah pada 3 Disember 2019.

Melalui penganjuran sesi-sesi libat urus tersebut, SPR telah memberi penerangan mengenai perancangan pelaksanaan pindaan undang-undang yang telah diluluskan serta mendapatkan maklum balas dan pandangan daripada semua pihak.

Di samping itu, SPR juga sedang bekerjasama dengan JPN melalui *Jawatankuasa Taks Force SPR dan JPN* dalam persiapan melaksanakan pendaftaran pemilih secara automatik dan urusan-urusan lain yang berkaitan. SPR menjangkakan semua persiapan yang sedang diambil

A tindakan oleh SPR akan dapat disiapkan dalam tempoh *18 hingga 24 bulan dari tarikh kelulusan pindaan oleh Dewan Negara pada 25 Julai 2019*. Sehubungan itu, jangkaan tarikh pelaksanaan tersebut adalah selewat-lewatnya pada bulan *Julai 2021*.

Sekian, terima kasih.

B (emphasis added)

[66] Finally, as mentioned earlier, the Deputy Chairman of the EC was reported on 10 March 2021 to have said to the effect that the EC was on track to implement s. 3 by July 2021:

C I am told the EC is on track in ensuring the system for AVR and lowering the voting age to 18 will be ready by July 2021.

The Secretariat has been working hard to achieve this, despite challenges posed by Covid-19 and movement control orders.

The systems are currently being put in place. With regard to the changes in legislation, I do not have that information at the moment.

D

The projection of 7.8 million new voters when AVR is in place is probably accurate or close to accurate. This huge number of new voters will mean the EC will face the tremendous challenge of getting the new voter rolls. Registration is one thing, but the gazetting of new voter rolls is a necessary requirement with certain procedures needed – such as objection

E period – before a person can vote.

The Issues Relating To Incomplete Or Inconsistent Addresses The EC Is Now Citing As Among The Reasons For The Delay, Were Known From The Outset

F **[67]** Paragraphs 9 to 12 of the affidavit affirmed by the Chairman of the EC read:

9. I verily believe and state that amongst the constraints faced by the EC in preparation towards the implementation of the AVR and lowering of the voting age to 18 is the inconsistencies between voters' data and the

G data in the National Registration Department (NRD). The EC has since together with the NRD set up a special task force to verify new registered voters and will be voters. It was discovered that some of the voters did not have a complete address. It is a tedious and ongoing task dealing with millions of citizens.

H 10. I further state that the problem of non-updated addresses is the biggest challenge in the implementation of the AVR. Currently, many Malaysians do not update their address on their identity card (MyKad) even though they have resided in new places. Apart from that, there are also those who have different addresses on MyKad and MyKad chips. The government needs to devise a special program for the voters to

I update the addresses according to the address on MyKad chips.

11. I am advised by the Senior Federal Counsel that based on existing legal provisions, eligible citizens must apply to register as a voter by filling in personal details including residential address. The EC will then determine the voting locality based on the address given. As for AVR, based on the data obtained from NRD, the voting locality of the will be voters will be based on the address instead of where they reside. In this regard, the EC is expecting to receive many complaints and objections on this.

12. I verily believe and state that the constraints faced by the EC in implementation of the AVR and lowering of the voting age to 18 need to be examined. AVR without verification or against the voter's desire to be registered will cause many problems. Verification and cleaning of the electoral roll is a complicated task. A clean electoral roll is one of the determining factors in ensuring a fair and clean election process.

[68] These issues regarding incomplete or inconsistent addresses were known from the outset, as is evident from the Hansard and from the various statements issued by the respondents described earlier in this judgment.

[69] It is also evident from these various statements from the respondents that steps had been taken from the outset to address these issues, including the setting up of a joint task force between the EC and the JPN.

[70] While it may be a 'tedious and ongoing task dealing with millions of citizens', the facts remain (i) these issues were known from the outset; (ii) the respondents knew of these issues when setting the date of implementation of July 2021 at the latest; (iii) July 2021 would mean the respondents have had a full two years to address these issues; and (iv) the respondents knew or must have been known the progress made in addressing these issues when they repeatedly affirmed the date of implementation, every few months, right up to March, 2021.

The EC Has Not Explained How The MCO Could Have Affected Its 'Plans And Preparation'

[71] Paragraphs 14 and 15 of the affidavit of the EC read:

14. I further state that the nationwide MCO to curb Covid-19 had affected the EC's plans and preparation to see the move come into fruition. The EC is committed to the implementation of the initiatives that were passed by Parliament for the 15th general election, guided by Article 55(3) of the Federal Constitution.

15. I further state that related preparations are under way, such as system development, data checking and coordination, as well as engagement with government agencies, political parties and NGOs. The EC is realistic with the time frame after evaluating the constraints and problems that have affected the EC's earlier plans and preparations.

[72] The EC has not explained how the MCO had affected its "plans and preparation".

[73] The court would take judicial notice the MCO began in March, 2020 with a full lockdown, which was followed by further lockdowns of various degrees of restrictiveness from May, 2020 onwards.

[74] It is not disputed however, that in the period subsequent to March, 2020 right up to March, 2021 when the MCO was ongoing in one form or another, both the EC and Ministers from the Government made statements reaffirming the implementation of s. 3 was proceeding as planned and would be implemented by July, 2021, all of which statements have been described earlier.

[75] The court would also note that during this period by-elections had been deferred and thus the EC did not have to handle by-elections as it normally would during more normal times.

[76] On this issue, in the final analysis, if the EC maintains that the MCO had affected its preparation to implement s. 3, the EC has to set out how so and this the EC has failed to do, whether in its media statement on 25 March 2021 or in its affidavit filed in these proceedings.

The Issue Of Amendments To Election Regulations

[77] Paragraph 7 of the affidavit of the EC reads in pertinent part:

> 7. I further state that based on the Hansard, Parliament also noted that appropriate time be given to EC to review the implementation of the AVR as well as the need to develop work processes to ensure the smooth running of the AVR which includes amendments to the relevant provisions, namely the Election (Registration of Electors) Regulations 2002 and Elections (Conduct of Elections) Regulations 1981 ...

[78] The short answer to this issue of these regulations having to be amended before s. 3 can be implemented, is that these are merely regulations and as such can be amended by the EC at any time further to the powers given to the EC under the Elections Act 1958.

[79] Although the affidavit of the EC merely referred to amendments to regulations, at the hearing learned Senior Federal Counsel submitted that s. 13(1) of the Election Offences Act 1954 had to be amended as well:

> **Disqualification for appointment as election agent, etc.**
>
> 13. (1) Subject to subsection 12(2), a person is disqualified for being appointed as an election agent, polling agent or counting agent if:
>
> (a) ...
>
> (b) he is less than twenty-one years of age

[80] Section 13(1) above however is stated to be subject to s. 12(2) which reads:

Nomination of election agent

12. (1) ...

(2) A candidate may name himself as election agent, and thereupon shall, so far as circumstances admit, be subject to this Act, both as a candidate and as an election agent, and any reference in this Act to an election agent shall be construed to refer to the candidate acting in his capacity of election agent.

[81] Section 13(1) read together with s. 12(2), would simply mean a candidate can still be an election agent even if he is less than 21 years, but non-candidate election agents will have to be at least 21 years of age.

[82] At the eleventh hour, learned Senior Federal Counsel further submitted s. 3(1)(a) of the Election Offences Act 1954 had to be amended as well:

Offences by any person

3. (1) Any person who:

(a) knowingly makes any false statements on or in connection with any application to be placed on any register or electors;

[83] This court is of the view these proposed amendments to the Election Offences Act 1954 (i) are minor; (ii) are not, strictly speaking, absolutely necessary for the implementation of s. 3; and (iii) even if deemed necessary, need not be done before s. 3 is implemented but can be done at a later stage prior to the next election.

[84] Even if this court were to accede to the argument of learned Senior Federal Counsel that these amendments have to be done before s. 3 can be implemented, it begs the question why these amendments have yet to be made given the Act was passed in July 2019 more than two years ago, and when the respondents actually plan to have these amendments passed.

Deferring The Implementation To After September, 2022 Means A Delay Of At Least 14 Months

[85] The court has taken note of the respondents' argument that the July, 2021 date was an estimation, however, this is not a case where the respondents are saying they need an extension of one or two months or even a few months from July, 2021 to implement s. 3.

[86] This court finds it simply makes no sense that from 2019 to 10 March 2021 the respondents repeatedly maintained they were on track to implement s. 3 by July, 2021 and then two weeks later in that same month of March, 2021 the respondents turned around to say the implementation could only be done in September, 2022 at the earliest.

[87] The court further finds that any decision to defer the implementation of s. 3 to after September, 2022 to be not only manifestly 'irrational', but 'illegal' as well in that it goes against the duty in s. 1(2) to act with all convenient speed, as those terms are defined in the leading case of *Council of Civil Service Unions & Ors v. Minister of Civil Service* [1985] AC 734.

The Respondents' Case Has Been Further Undermined By The Statements Of The Minister In April And May, 2021.

[88] As noted earlier, subsequent to the EC's change of position in late March, 2021, the then Minister in the Prime Minister's Department (Parliament and Law) came out with statements in late April and then in early May, 2021 to the effect the Government was reverting to the original timeline.

[89] The press report on the statement by the Minister on 2 May 2021 was set out earlier in para. 16 herein, but for ease of reference is reproduced below:

> The government has given an assurance to implement the Undi18 this year, says Minister in the Prime Minister's Department (Parliament and Law), Datuk Seri Takiyuddin Hassan.
>
> He said that currently, the Election Commission (EC) was still looking into several matters before finalising, and expected it to be implemented this July, thus enabling Malaysians aged 18 to vote in the 15th General Election.
>
> "However, I can't give an exact timeframe but definitely within this year. If we can do it this July, we will do it," he told reporters after attending the Aidilfitri contributions presentation for Friday mosque officials, and also penghulu for the Kota Bharu Parliamentary constituency on Sunday (May 2).
>
> Takiyuddin said that the government supported, and was very committed to ensuring, that the amended Article 119 of the Federal Constitution, which was to lower the age limit for voters from 21 to 18, could be implemented.
>
> "It is indeed the intention of the government, under the leadership of Prime Minister Tan Sri Muhyiddin Yassin, for the government to give the right to our people who are 18 years old to vote and determine the leadership of our country," he said ...

[90] If there was any doubt the EC's announcement in late March, 2021 deferring the implementation of s. 3 was not prompted by the reasons stated but motivated by some extraneous considerations, such doubt would be erased by these subsequent statements by the said Minister in late April and early May, 2021.

[91] The respondents in their affidavits have not disputed these statements by the said Minister, in fact in their affidavits the respondents have not referred to the statements made by or on behalf of the respondents described in this judgment, despite the applicants in their affidavit having set out a complete narrative and exhibited copies, of these statements.

Conclusion

[92] In the premises, this court is compelled to and hereby grants the following orders:

(i) an order of *certiorari* quashing the decision of the respondents to defer the implementation of s. 3 to after September, 2022; and

(ii) an order of *mandamus* that the respondents take all steps necessary for s. 3 to come into operation as soon as possible and in any event by 31 December 2021;

[93] There shall be no order as to costs.